

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2104 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MM BABI

Versus

GUJARAT INDUSTRIAL INVESTMENT COPORATION LTD.

Appearance:

MR DC RAVAL FOR MR MR ANAND for Petitioners
MR KAUSHAL THAKKAR FOR NANAVATI ASSOCIATES for
Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/96

ORAL JUDGMENT

Perused the Special Civil Application and heard learned counsel for the parties.

2. The petitioners, in this Special Civil Application prayed for quashing of annexure 'B' under which the claim of seniority at Sr.No.2, 3, & 4 by the petitioners in the category of Senior Managers has been

declined. In the seniority list, the petitioners were placed at Sr.No.5, 7, & 8 respectively. Above the petitioners, Shri R.C. Patel, Shri S.K. Shah & Shri R.C. Tibak were placed in the said seniority list. The petitioners claimed that they should have been placed at Sr.No.2, 3, & 4, meaning thereby they are claiming seniority above the aforesaid three persons in the category of Senior Manager. This clearly comes out from the prayer 'B' made in the petition. The next claim has been made by the petitioners for deemed promotion on the said post with effect from 24th June 1975, i.e. the date on which their juniors Shri P.G. Modi and Shri A.A. Shah were promoted.

3. From the reply which has been filed by the Respondent-Corporation, it reveals that the case of the petitioners for promotion has been considered in the month of July 1975, but they were not found suitable for promotion. Again their cases were considered for promotion in April 1976 but at that time too they were not found fit for promotion. It is not the case where the case of the petitioners was not considered for promotion but it is a case where they have been considered for promotion but not found suitable. The petitioners have only right of consideration for promotion and not a right for promotion. Their two juniors, Shri P.G. Modi and Shri A.A. Shah were promoted as they were found fit for promotion. While promoting these two persons the case of the petitioners has also been considered and as such the claim of the petitioners for promotion on the post of Senior Manager from the date these two persons have been given promotion has no merits. Otherwise also this claim of the petitioners suffers from defect of delay and laches. The petitioners were denied promotion in the year 1975 whereas this Special Civil Application has been filed in the year 1983. This delay of about eight years in approaching to this Court against the action of the respondent, not giving promotions to the petitioners is fatal to the claim of the petitioners. Lastly those two persons who have been promoted have not been impleaded as parties to this petition nor their promotion has been challenged by the petitioners.

4. Taking into consideration the totality of these facts the claim of the petitioners regarding the deemed date of promotion on the post of Senior Manager cannot be accepted.

5. So far as the claim of the petitioners of seniority above the three persons at Sr.No.2, 3, & 4 in

the seniority list, annexure 'A' is concerned, it cannot be accepted as those three persons have also not been impleaded as parties to this petition. Moreover, in case any decision is given in favour of the petitioners then it will certainly adversely effect the aforesaid three persons. These three persons are the necessary parties to this petition and in their absence this petition is not maintainable. Any reference, if required in this respect, then a reference may have to the decision of Supreme Court in the case of Ishwarsingh v. Kuldipsingh reported in 1995 (Supp.)(1) SCC 179.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)